

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARILYN SABINA DILLON,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
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17 Civ. 4136 (PAE)(BCM)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiff Marilyn Dillon brings this action pursuant to § 205(g) of the Social Security Act (the “Act”), 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Acting Commissioner of Social Security (the “Commissioner”) denying her application for disability insurance benefits (“DIB”). Both parties have moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Before the Court is the September 7, 2018 Report and Recommendation of the Hon. Barbara Moses, United States Magistrate Judge, recommending that the Court deny the Commissioner’s motion, grant the plaintiff’s motion, and remand this case to the Commissioner for further proceedings. Dkt. 25 (the “Report”). For the following reasons, the Court adopts the Report in full.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y.

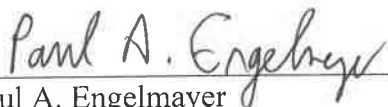
Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); see also, e.g., *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Because neither Dillon nor the Commissioner has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Moses's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. The Report explicitly states that failure to object within fourteen days will result in a waiver of objections and will preclude appellate review. Report at 37. Accordingly, the failure to object operates as a waiver of appellate review. See *Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the reasons articulated in the Report, it is hereby ordered that: (1) plaintiff's motion for judgment on the pleadings is GRANTED; (2) the Commissioner's cross-motion for judgment on the pleadings is DENIED; and (3) the case is REMANDED for further administrative proceedings.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: September 24, 2018
New York, New York